JOHORE REPORTS.

[APPELLATE CIVIL JURISDICTION]

MILLS, J.

April 22, 1939.

PATIMAH BINTE HANIS.....Appellant (Plaintiff)

vs.

HAJI ISMAIL BIN TAMIN.....Respondent (Defendant)

[BATU PAHAT MAGISTRATE'S CIVIL APPEAL No. 3 of 1939]

Magistrate's Court, Jurisdiction—Right or interest in immovable property—Muhammedan law, whether Law of Johore or Foreign Law.

The defendant's former wife claimed $800/- damages for his wrongful refusal to assign to her an undivided half share in a certain piece of land, to which half share she claimed to be entitled by Muhammedan Law. The Magistrate dismissed the action on the ground that he had no jurisdiction to determine rights or interests in immovable property. The plaintiff appealed on the ground, *inter alia*, that the claim did not involve the determination of any right under the law of Johore, but merely a finding of fact on a point of Muhammedan Law, which is foreign law.

Held that Muhammedan Law is a part of the law of Johore.

MAGISTRATE'S CIVIL APPEAL.

MacIntyre for Appellant.

Chia for Respondent.

MILLS, J.—The plaintiff is the former wife of the defendant.

The defendant at material times was the approved occupier of land referred to as D.P. 9/35 and later as A.O. No. 377, Mukim of Simpang Kanan IV, Batu Pahat.

She claims $800 damages from the defendant: her claim is based on two grounds

(1) since she jointly with her husband planted the land and worked on it, she is entitled by law to an undivided half share in the land

(2) the defendant agreed to give her an undivided half share in the land.

The Magistrate dismissed the suit on the ground that the first basis of the claim necessitates the determination of the plaintiff's right or interest in immovable property, and by clause (d) in Section 59 (iii) of the Courts Enactment (No. 54), he has no jurisdiction to try an action for such determination. The plaintiff appeals.

In the first place she contends that this is not an "action for the determination of rights or interests in immovable property," because it is a claim for damages:

I cannot accept this contention. The claim for damages is based on the allegation that the plaintiff has a right or interest in immovable property, and in order to decide whether the claim is good in law the Court must necessarily determine whether the plaintiff has a right or interest in immovable property: this the Magistrate is forbidden to do.

In the second place the plaintiff contends that this is not an "action for the determination of rights or interests in immovable property" because the claim does not involve any determination of the law of Johore but merely a finding of fact on a point of foreign law, viz. Muhammadan law.

I cannot accept this contention.

For the purposes of the present appeal it is not necessary for me to invent a formula embracing all the laws of Johore: but if it were, I should be obliged to reject, as inaccurate and incomplete, the generalization, framed by an authority who is not an expert on the laws of Johore, in the following terms "the essential basis of the law is Malay custom and Muhammadan law, as inextricably blended, for all matters of civil rights as affecting the natives, with legislation—for other matters and for criminal law" (*Halsbury's* laws of England. second edition. Vol. XI. page 246. para. 464).

I propose to do no more than decide one question "Is Muhammadan law a part of the law of Johore or is it foreign law?"

My answer is that it is a part of the law of Johore. This decision accords with the decision of the Court of Appeal in the Federated Malay States, as stated in the case of *Ramah binti Ta'at* v. *Latoh binti Malim Sutan*, (6 F.M.S.L.R. p. 128). I do not say, however, that in Johore the rules of Muhammadan law are not modified, for instance, by legislation or by local custom having the force of law.

During the hearing of the appeal I felt a doubt whether the defendant had any right or interest in "immovable property," because at the time when the suit was filed no title had been registered in respect of this land and the defendant had only rights *in personam* against the State: but I am now satisfied that such rights are "benefits to arise out of land" and are therefore included within the scope of "immovable property" as described in Section 2 (vii) of the Interpretation and General Clauses Enactment (No. 2). On the whole, I hold that the Magistrate was right in declining jurisdiction.

The appeal is dismissed.

Appeal dismissed.